



No. 79. 5.

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Brief of Wheeler in support of  
decree below - by leave

Supreme Court of the United States,

OCTOBER TERM, 1897.  
*Filed Mar. 7, 1898.*

THE FRANKLIN SUGAR REFIN-  
ING Co.,

Appellant,

vs.

THE STEAMSHIP "SILVIA," RED  
CROSS LINE,

Appellee.

No. 79.

**Supplemental Brief submitted by leave  
of the Court in support of the decree  
below.**

**First.**

This case, as well as the *Carib Prince* and *Calderon* against the Atlas S. S. Co., involve the construction of the Harter Act.

The following is a reprint of that Act, as it passed the House of Representatives, and as it finally became a law. The portions stricken out in the Senate, are printed in italics in the reprint of the House bill. The portions added in the Senate are printed in italics in the reprint of the bill as it finally passed.

52d Congress,  
2d Session.

H. R. 9176.

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IN THE SENATE OF THE UNITED STATES.

December 20, 1892.

Read twice and referred to the Committee on Commerce.

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(Portions stricken out in Senate are printed in italics.)

AN ACT

Relating to contracts of common carriers and to certain obligations, duties, and rights in connection with the carriage of property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for *any common carrier or* the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care *in transport*, or proper delivery of any and all lawful merchandise or property committed to its or their charge, *nor shall it be lawful to limit its or their liability to less than a full indemnity to the legal claimant for any loss or damage therefrom,* and any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

SEC. 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to properly equip, man, provision, and outfit said vessel, and make said vessel seaworthy and capable of perform-

27 Stat. at Large, 445; 24 Cong. Record, Part 2, pp. 1180, 1291.

(Portions added in Senate are printed in italics.)

# HARTER ACT, FEBRUARY 13, 1893.

AN ACT relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

SEC. 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel *to exercise due diligence*, properly equip, man, provision, and outfit said vessel, and *to make* said vessel seaworthy

ing her intended voyage, or *any covenant or agreement* whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in anywise be lessened, weakened or avoided.

SEC. 3. That if any vessel transporting merchandise or property *between ports* in the United States of America and *foreign ports* shall, on starting on her voyage, be in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or master shall become or be held responsible for damage or loss resulting from *error of judgment* in navigation or in the management of said vessel, *if navigated with ordinary skill and care, from the time of her leaving her usual place of loading on her intended voyage until her arrival at the usual place of discharge at her port of delivery*, nor shall the owner or owners, the vessel, or master be held liable for losses arising from dangers of the sea, acts of God, or public enemies, *or in saving life*, and *it may be stipulated in bills of lading and shipping receipts that the vessel may render services to property in distress afloat and tow same to the nearest and most convenient port of safety without incurring penalties from deviation in rendering such service.*

SEC. 4. That it shall be the duty of the owner or owners, agent, manager or other authorized person to issue to shippers of any lawful merchandise a bill of lading or shipping document stating the marks, packages or quantity and apparent condition of such merchandise or property delivered to and received by the owner, master or agent of the vessel for transportation, and the voyage, or ports at which such vessel is intended to touch, and such document shall be evidence of the responsibility of the vessel for the merchandise therein described.

SEC. 5. That it shall be the duty of the collector of the port in which the vessel is lying to refuse clearance to a vessel from said port if he is informed and is satisfied that the owner, master, agent, connecting carrier or other

and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

SEC. 3. That if *the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea, or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such services.*

SEC. 4. *That it shall be the duty of the owner or owners, masters or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.*

SEC. 5. *That for a violation of any of the provisions of this act the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine*

*person representing such vessel has issued bills of lading for merchandise or property containing clauses that are declared not lawful by section one or section two of this act, or if he is informed and is satisfied that the owner, agent, master or other person representing such vessel will not issue bills of lading, as required by section four of this act, for merchandise or property delivered to and received by the vessel for transportation; and the said collector shall withhold clearance papers to said vessel until bills of lading or shipping documents are issued to conform to the said first, second and fourth sections of this act, or, if documents have been previously issued, until they are modified to conform to the requirements of said sections.*

SEC. 6. That this act shall not be held to modify or repeal sections forty-two hundred and eighty-one, forty-two hundred and eighty-two and forty-two hundred and eighty-three of the Revised Statutes of the United States.

SEC. 7. That this act shall take effect from and after the first day of *September*, eighteen hundred and *ninety-two*.

Passed the House of Representatives December 15, 1892.

Attest :

JAMES KERR,  
Clerk.

*not exceeding two thousand dollars. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled thereafter in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.*

SEC. 6. That this act shall not be held to modify or repeal sections forty-two hundred and eighty-one, forty-two hundred and eighty-two, and forty-two hundred and eighty-three of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners, or representatives.

SEC. 7. *Sections one and four of this act shall not apply to the transportation of live animals.*

SEC. 8. That this act shall take effect from and after the first day of July, eighteen hundred and ninety-three.

Approved, February 13, 1893.



## Second.

Much light is thrown on the intention of Congress by this examination of what it refused to do. From this it appears that after very full consideration Congress refused to enact the following propositions :

1. "Nor shall it be lawful to limit its or their liability (that of the carrier) to less than a full indemnity to the legal claimant for any loss or damage" from negligence.

2. That the condition of exemption from liability for damage or loss resulting from error in judgment in navigation or in the management of the vessel should be—

- a. Her seaworthiness at the outset.

- b. Her being navigated with ordinary skill and care.

Not only did Congress refuse to enact these propositions which were contained in the bill as it came from the House, but it did finally enact that if the owner should exercise due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, the vessel and her owner should not be liable, for faults or errors in navigation or in the management of the vessel.

Neither the House bill, nor the bill as finally passed prohibited the insertion in bills of lading of clauses excluding liability for latent defects. Indeed such clauses were never invalid by the maritime law of this country if due diligence were used to discover such defects, and guard against them.

Thus it is plain that a bill was passed, at the end of a controversy that had been going on for many years, and with the purpose of settling the questions in difference between carriers, shippers and underwriters. All were satisfied with the bill as it was amended in the Senate and passed by both Houses of Congress. Is not the in-

ference inevitable that it settled the controversy and adjusted the rights of all parties in an equitable manner? How then can the shipper or the underwriter justly insist upon an absolute warranty of seaworthiness not expressed in the bill of lading, and which is inconsistent with the positive requirements of the act? How can it be contended that the carrier remains liable for a latent defect, not discoverable by due diligence, when he is not liable for actual negligence of the mariners, provided due diligence has been used "to make the vessel seaworthy and properly manned, equipped and supplied"?

### **Third.**

No claim is made in the appellant's brief that the Harter Act does not apply to foreign vessels. That it does is in effect conceded, and was held in the Courts below (Record, pp. 49, 55). For this reason no elaborate argument is presented on that subject. In view of the general words of that Act, and of the language of this Court in

The Scotland, 105 U. S., 24.

the point would seem to be clear. In that case the Court, after referring to a few cases where the Courts of one country would administer the law of another, adds (pp. 30, 31):

"In all other cases, each nation will also administer justice according to its own laws. And it will do this without respect of persons, to the stranger, as well as to the citizen. If it be the legislative will that any particular privilege should be enjoyed by its own citizens alone, express provision will be made to that effect.

Some laws, it is true, are necessarily special in their application to domestic ships, such as those relating to the forms of ownership, charter party, and nationality; others follow the vessel wherever she goes, as the law of the flag, such as those which regulate the mutual relations of master and crew, and the power of the master to bind the ship or her owners. But the great mass of the laws are, or are intended to be, expressive of the rules of justice and right applicable alike to all. \* \* \*

“ But it is enough to say, that the rule of limited responsibility is now our maritime rule. It is the rule by which, through the act of Congress, we have announced that we propose to administer justice in maritime cases. We see no reason, in the absence of any different law governing the case, why it should not be applied to foreign ships as well as to our own, whenever the parties choose to resort to our Courts for redress. Of course the rule must be applied, if applied at all, as well when it operates against foreign ships as when it operates in their favor.”

#### **Fourth.**

The decree of the Court below should be affirmed with costs.

EVERETT P. WHEELER,  
Of Counsel for Atlas Steamship Co.

